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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,375	07/07/2000	ANTHONY DAVID ORMEROD	ABLE-0014	4066

7590 03/14/2003  
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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WASHINGTON, DC 20005-3315

EXAMINER

GEORGE, KONATA M

ART UNIT PAPER NUMBER

1616

DATE MAILED: 03/14/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

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09/530,375	07/07/2000	ANTHONY DAVID ORMEROD	ABLE-0014	4066

7590 02/12/2003

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# Office Action Summary

Application No.

09/530,375

Applicant(s)

ORMEROD ET AL.

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 24,25 and 28-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24,25 and 28-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 24, 25 and 28-39 are pending in this application.

#### ***Action Summary***

1. Applicant's request for reconsideration of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. The rejection of claims 24, 25, 28, 30-34 and 36-39 under 35 U.S.C. 102(a) as being anticipated by Jackman et al. is hereby withdrawn.
3. The rejection of claims 24-26 and 28-39 under 35 U.S.C. 103(a) over Gans et al. in view of Jackman et al. is hereby withdrawn.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 24 and 25 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Information Disclosure Statement***

5. The information disclosure statement (IDS) submitted on April 27, 2000 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 29 recites the limitation "the alkanoic acid or alkenoic acid" in lines 1 and

2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 24, 25, 28 and 30-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over San-Doz Ltd. (WO 96/13249) in view of Van Scott (EP 0273202 A2).

San-Doz Ltd. discloses a topical composition in the form of an emulsion that comprises the compound FK506. The composition in addition to the FK506 compound can contain thickening agent such as cetyl alcohol, cetostearyl alcohol, etc. (page 6, lines 7-11 and page 10, lines 9 and 13) and the composition is used to treat inflammatory and hyperproliferative skin diseases (page 12, lines 15-20). San-Doz teach that an organic acid is used, but not as a permeation modulator.

Van Scott teaches in page 2, lines 8-9 that they have discovered that hydroxyacids or related compounds wherein incorporated into a therapeutic compositions can substantially enhance topical effects of cosmetic and pharmaceutical agents.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use organic acids as permeation enhancers in the composition of San-Doz in view of the teachings of Van Scott that discloses the use of hydroxyacids as enhancers.

***Conclusion***

9. Claims 24, 25 and 28-39 stand rejected.

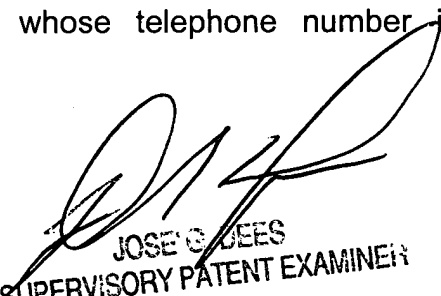
***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER

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